

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JESSICA ALBORNOZ, an individual,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., a
Delaware corporation; WALMART,
INC., a Delaware corporation; and
DOES 1-50, inclusive,

Defendants.

CASE NO. 1:22-CV-01229-JLT-CDB

PROTECTIVE ORDER

Complaint Filed: August 2, 2022
FAC Filed: August 23, 2022

On Stipulation, Plaintiff JESSICA ALBORNOZ (“Plaintiff”) and Defendant WAL-MART ASSOCIATES, INC. and Defendant WALMART INC. (erroneously sued as WALMART, INC.) (collectively, “Defendants”), the Court enters a Protective Order in this matter as follows:

I. PURPOSES AND LIMITATIONS

The parties, by their undersigned counsel, pursuant to Fed. R. Civ. P. 26(c)(1), hereby stipulate to the following provisions of this Stipulated Protective Order. The parties agree that nothing in this Order shall be deemed to limit the extent to which counsel for the parties may advise or represent their respective clients, conduct discovery, prepare for trial, present proof at trial, including any document designated

1 protected information as set forth herein, or oppose the production or admissibility of
 2 any information or documents which have been requested.

3 Discovery in this Action is likely to involve the production of confidential,
 4 proprietary, or private information for which special protection from public disclosure
 5 and from use for any purpose other than prosecuting this litigation may be warranted.
 6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
 7 following Stipulated Protective Order. The parties acknowledge that this Order does
 8 not confer blanket protections on all disclosures or responses to discovery and that the
 9 protection it affords from public disclosure and use extends only to the limited
 10 information or items that are entitled to confidential treatment under the applicable
 11 legal principles. The parties further acknowledge, as set forth in Section XIII(C),
 12 below, that this Stipulated Protective Order does not entitle them to file confidential
 13 information under seal; Local Rule 141 sets forth the procedures that must be followed
 14 and the standards that will be applied when a party seeks permission from the Court to
 15 file material under seal.

16 **II. GOOD CAUSE STATEMENT**

17 A. This Action is likely to involve commercial, financial, and/or proprietary
 18 information for which special protection from public disclosure and from use for any
 19 purpose other than prosecution of this Action is warranted. Such confidential and
 20 proprietary materials and information consist of, among other things, confidential
 21 business or financial information, information regarding confidential business
 22 practices, or other confidential research, development, or commercial information
 23 (including information implicating privacy rights of third parties), information
 24 otherwise generally unavailable to the public, or which may be privileged or otherwise
 25 protected from disclosure under state or federal statutes, court rules, case decisions, or
 26 common law. Accordingly, to expedite the flow of information, to facilitate the
 27 prompt resolution of disputes over confidentiality of discovery materials, to adequately
 28 protect information the parties are entitled to keep confidential, to ensure that the

parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

III. DEFINITIONS

A. Action: This pending federal lawsuit titled *Jessica Alborno v. Wal-Mart Associates, Inc.; Walmart Inc.; and DOES 1 through 50, inclusive*.

B. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

C. “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” Information or Items: Information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

D. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

E. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

F. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

G. ESI: Electronically stored information.

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1 H. Expert: A person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 I. House Counsel: Attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 J. Non-Party: Any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this Action.

9 K. Outside Counsel of Record: Attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm which
12 has appeared on behalf of that party.

13 L. Party: Any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 M. Producing Party: A Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 N. Professional Vendors: Persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and subcontractors.

22 O. Protected Material: Any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

24 P. Receiving Party: A Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 **IV. SCOPE**

27 A. The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or extracted

1 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
 2 Protected Material; and (3) any testimony, conversations, or presentations by Parties
 3 or their Counsel that might reveal Protected Material. However, the protections
 4 conferred by this Stipulation and Order do not cover the following information: (a) any
 5 information that is in the public domain at the time of disclosure to a Receiving Party
 6 or becomes part of the public domain after its disclosure to a Receiving Party as a
 7 result of publication not involving a violation of this Order, including becoming part
 8 of the public record through trial or otherwise; and (b) any information known to the
 9 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
 10 disclosure from a source who obtained the information lawfully and under no
 11 obligation of confidentiality to the Designating Party.

12 B. If a party intends to or may offer Protected Material at a hearing or trial,
 13 then the offering party must give at least seven (7) days advance notice to the
 14 Designating Party so that any use or disclosure may be addressed in accordance with
 15 the parties' joint case management statement, the Court's case management Order,
 16 other pre-trial order, or by a motion *in limine*.

17 **V. DURATION**

18 A. Even after final disposition of this litigation, the confidentiality
 19 obligations imposed by this Order shall remain in effect until a Designating Party
 20 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
 21 be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 22 with or without prejudice; and (2) final judgment herein after the completion and
 23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 24 including the time limits for filing any motions or applications for extension of time
 25 pursuant to applicable law.

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1 **VI. DESIGNATING PROTECTED MATERIAL**

2 A. Exercise of Restraint and Care in Designating Material for Protection.

3 1. Each Party or Non-Party that designates information or items for
4 protection under this Order must take care to limit any such designation to specific
5 material that qualifies under the appropriate standards. The Designating Party must
6 designate for protection only those parts of material, documents, items, or oral or
7 written communications that qualify—so that other portions of the material,
8 documents, items, or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this Order.

10 2. Mass, indiscriminate, or routinized designations are prohibited.
11 Designations that are shown to be clearly unjustified or that have been made for an
12 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
13 process or to impose unnecessary expenses and burdens on other parties) expose the
14 Designating Party to sanctions.

15 3. If it comes to a Designating Party's attention that information or
16 items that it designated for protection do not qualify for protection, that Designating
17 Party must promptly notify all other Parties that it is withdrawing the mistaken
18 designation.

19 B. Manner and Timing of Designations.

20 1. Except as otherwise provided in this Order (*see, e.g.*, Section
21 VI.B.2.b), or as otherwise stipulated or ordered, Disclosure or Discovery Material that
22 qualifies for protection under this Order must be clearly so designated before the
23 material is disclosed or produced.

24 2. Designation in conformity with this Order requires:

25 a. For information in documentary form (*e.g.*, paper or
26 electronic documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
28 "ATTORNEYS' EYES ONLY" to each page that contains protected material. If only

1 a portion or portions of the material on a page qualifies for protection, the Producing
2 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
3 markings in the margins).

4 b. A Party or Non-Party that makes original documents or
5 materials available for inspection need not designate them for protection until after the
6 inspecting Party has indicated which material it would like copied and produced.
7 During the inspection and before the designation, all of the material made available
8 for inspection shall be deemed “CONFIDENTIAL” or “ATTORNEYS’ EYES
9 ONLY.” After the inspecting Party has identified the documents it wants copied and
10 produced, the Producing Party must determine which documents, or portions thereof,
11 qualify for protection under this Order. Then, before producing the specified
12 documents, the Producing Party must affix the “CONFIDENTIAL” or
13 “ATTORNEYS’ EYES ONLY” legend to each page that contains Protected Material.
14 If only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
16 appropriate markings in the margins).

17 c. For testimony given in deposition or in other pretrial or trial
18 proceedings, that the Designating Party identify on the record, before the close of the
19 deposition, hearing, or other proceeding, all protected testimony.

20 d. For information produced in some form other than
21 documentary and for any other tangible items, that the Producing Party affix in a
22 prominent place on the exterior of the container or containers in which the information
23 or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
24 If only a portion or portions of the information or item warrant protection, the
25 Producing Party, to the extent practicable, shall identify the protected portion(s).

26 C. Inadvertent Failures to Designate.

27 1. If timely corrected, an inadvertent failure to designate qualified
28 information or items does not, standing alone, waive the Designating Party’s right to

1 secure protection under this Order for such material. Upon timely correction of a
2 designation, the Receiving Party must make reasonable efforts to assure that the
3 material is treated in accordance with the provisions of this Order.

4 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 A. Timing of Challenges.

6 1. Any party or Non-Party may challenge a designation of
7 confidentiality at any time that is consistent with the Court's Scheduling Order.

8 B. Meet and Confer.

9 1. The Challenging Party shall initiate the dispute resolution process
10 under Local Rule 251.

11 C. The burden of persuasion in any such challenge proceeding shall be on
12 the Designating Party. Challenges made for an improper purpose (e.g., to harass or
13 impose unnecessary expenses and burdens on other parties) may expose the
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
15 the confidentiality designation, all parties shall continue to afford the material in
16 question the level of protection to which it is entitled under the Producing Party's
17 designation until the Court rules on the challenge.

18 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 A. Basic Principles.

20 1. A Receiving Party may use Protected Material that is disclosed or
21 produced by another Party or by a Non-Party in connection with this Action only for
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material
23 may be disclosed only to the categories of persons and under the conditions described
24 in this Order. When the Action has been terminated, a Receiving Party must comply
25 with the provisions of Section XIV below.

26 2. Protected Material must be stored and maintained by a Receiving
27 Party at a location and in a secure manner that ensures that access is limited to the
28 persons authorized under this Order.

1 B. Disclosure of “CONFIDENTIAL” Information or Items.

2 1. Unless otherwise ordered by the Court or permitted in writing by
3 the Designating Party, a Receiving Party may disclose any information or item
4 designated “CONFIDENTIAL” only to:

5 a. The Receiving Party’s Outside Counsel of Record in this
6 Action, as well as employees of said Outside Counsel of Record to whom it is
7 reasonably necessary to disclose the information for this Action;

8 b. The officers, directors, and employees (including House
9 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
10 Action;

11 c. Experts (as defined in this Order) of the Receiving Party to
12 whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 d. The Court and its personnel;

15 e. Court reporters and their staff;

16 f. Professional jury or trial consultants, mock jurors, and
17 Professional Vendors to whom disclosure is reasonably necessary or this Action and
18 who have signed the “Acknowledgment and Agreement to be Bound” attached as
19 Exhibit A hereto;

20 g. The author or recipient of a document containing the
21 information or a custodian or other person who otherwise possessed or knew the
22 information;

23 h. During their depositions, witnesses, and attorneys for
24 witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the
25 deposing party requests that the witness sign the “Acknowledgment and Agreement to
26 Be Bound;” and (ii) they will not be permitted to keep any confidential information
27 unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise
28 agreed by the Designating Party or ordered by the Court. Pages of transcribed

1 deposition testimony or exhibits to depositions that reveal Protected Material may be
2 separately bound by the court reporter and may not be disclosed to anyone except as
3 permitted under this Stipulated Protective Order; and

4 i. Any mediator or settlement officer, and their supporting
5 personnel, mutually agreed upon by any of the parties engaged in settlement
6 discussions.

7 C. Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

8 1. The parties and all persons subject to this Order agree that
9 information designated as “ATTORNEYS’ EYES ONLY” may only be accessed or
10 reviewed by the following:

11 a. Material and information designated as “Highly
12 Confidential—Attorneys’ Eyes Only” shall only be disclosed to the Court, its staff, in-
13 house and outside counsel of record for each party, the secretarial, clerical, and
14 paralegal staff of each, and consulting and testifying experts retained by a party in this
15 action.

16 b. Other witnesses or persons to whom the Designating Party
17 agrees in advance of disclosure or by court order.

18 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
19 **IN OTHER LITIGATION**

20 A. If a Party is served with a subpoena or a court order issued in other
21 litigation that compels disclosure of any information or items designated in this Action
22 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that Party must:

23 1. Promptly notify in writing the Designating Party. Such notification
24 shall include a copy of the subpoena or court order;

25 2. Promptly notify in writing the party who caused the subpoena or
26 order to issue in the other litigation that some or all of the material covered by the
27 subpoena or order is subject to this Protective Order. Such notification shall include a
28 copy of this Stipulated Protective Order; and

3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. Make the information requested available for inspection by the Non-Party.

C. If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

A. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons to execute the "Acknowledgment and Agreement to be Bound" that is attached hereto as **Exhibit A**.

XII. MISCELLANEOUS

A. Right to Further Relief.

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections.

1. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no

1 Party waives any right to object on any ground to use in evidence of any of the material
2 covered by this Protective Order.

3 C. Filing Protected Material.

4 1. A Party that seeks to file under seal any Protected Material must
5 comply with Local Rule 141. Protected Material may only be filed under seal pursuant
6 to a court order authorizing the sealing of the specific Protected Material at issue. If a
7 Party's request to file Protected Material under seal is denied by the Court, then the
8 Receiving Party may file the information in the public record unless otherwise
9 instructed by the Court.

10 **XIII. FINAL DISPOSITION**

11 A. After the final disposition of this Action, as defined in Section V, within
12 sixty (60) days of a written request by the Designating Party, each Receiving Party
13 must return all Protected Material to the Producing Party or destroy such material. As
14 used in this subdivision, "all Protected Material" includes all copies, abstracts,
15 compilations, summaries, and any other format reproducing or capturing any of the
16 Protected Material. Whether the Protected Material is returned or destroyed, the
17 Receiving Party must submit a written certification to the Producing Party (and, if not
18 the same person or entity, to the Designating Party) by the 60 day deadline that
19 (1) identifies (by category, where appropriate) all the Protected Material that was
20 returned or destroyed and (2) affirms that the Receiving Party has not retained any
21 copies, abstracts, compilations, summaries or any other format reproducing or
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
23 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
24 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
25 expert reports, attorney work product, and consultant and expert work product, even if
26 such materials contain Protected Material. Any such archival copies that contain or
27 constitute Protected Material remain subject to this Protective Order as set forth in
28 Section V.

1 B. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 **XIV. CLAW-BACK REQUESTS**

5 A. The production of privileged or work-product protected documents, ESI,
6 or information, whether inadvertent or otherwise, is not a waiver of the privilege or
7 protection from discovery in this case or in any other federal or state proceeding.

8 B. This Order shall be interpreted to provide the maximum protection
9 allowed by Federal Rule of Evidence 502(d) and shall be enforceable and granted full
10 faith and credit in all other state and federal proceedings by 28 U.S. Code § 1738. In
11 the event of any subsequent conflict of law, the law that is most protective of privilege
12 and work product shall apply.

13 C. Nothing contained herein is intended to or shall serve to limit a party's
14 right to conduct a review of documents, ESI, or information (including metadata) for
15 relevance, responsiveness and/or segregation of privileged, and/or protected
16 information before production.

17 D. If the Receiving Party has reason to believe that a produced document or
18 other information may reasonably be subject to a claim of privilege, then the Receiving
19 Party shall immediately sequester the document or information, cease using the
20 document or information and cease using any work product containing the
21 information, and shall inform the Producing Party of the beginning BATES number of
22 the document or, if no BATES number is available, shall otherwise inform the
23 Producing Party of the information.

24 E. A Producing Party must give written notice to any Receiving Party
25 asserting a claim of privilege, work-product protection, or other ground for reclaiming
26 documents or information (a "claw-back request"). After a claw-back request is
27 received, the Receiving Party shall immediately sequester the document or information
28 (if not already sequestered) and shall not review or use that document, or any work

product containing information taken from that document, for any purpose. The parties shall meet and confer regarding any claw-back request.

Dated: March 16, 2023

LAW OFFICE OF ALISA GOUKASIAN, APC

/s/ Alisa Goukasian

By: _____

Alisa Goukasian

Attorneys for Plaintiff
JESSICA ALBORNOZ

Dated: March 16, 2023

SHEGERIAN ASSOCIATES, INC.

/s/ Mark Lim

By: _____

Carney R. Shegerian
Anthony Nguyen
Mark Lim

Attorneys for Plaintiff
JESSICA ALBORNOZ

Dated: March 16, 2023

JACKSON LEWIS P.C.

/s/ Clarisse C. Petersen

By: _____

Clarisse C. Petersen
Raina Sharma

Attorneys for Defendants
WAL-MART ASSOCIATES, INC.
and WALMART INC.

IT IS SO ORDERED.

Dated: March 17, 2023


UNITED STATES MAGISTRATE JUDGE